Some services, such as performing hiring or training of personnel on behalf of the section 274 affiliate, are prohibited by section 274(b)(7)(A). Section 274(b) specifically identifies the services the BOC could not provide to its section 274 affiliate. Section 274(b) is clear on its face and requires no amplification.

All other services provided by the BOC would be permitted. For example, permitted services could include accounting and data processing services, general support and administrative services, etc., provided those transactions were negotiated on an arm's-length basis, were reduced to writing, and were publicly available, as required by section 274(b)(3).

3. Research and Development (Notice ¶¶ 44, 46)

Section 274(b)(7)(C) prohibits a BOC from performing research and development ("R&D") on behalf of its section 274 affiliate. The Commission asks whether this provision limits a BOC's ability to perform R&D for the sole and exclusive use of a section 274 affiliate or whether a BOC must refrain from performing any R&D that may potentially be of use to its section 274 affiliate.[41]

This section prohibits a BOC from conducting R&D for the exclusive benefit of its section 274 affiliate. It does not, however, prohibit the independent R&D efforts of a BOC, even if the results of those efforts could be used by its section 274 affiliate. A BOC would be permitted to share its general R&D findings with its section 274 affiliate.

[41] Id. ¶ 46.

E. Complaint Proceedings: Expediency In Resolving Complaints Involving A BOC And Its Electronic Publishing Affiliate Or Multi-Purpose Affiliate Is Not A Statutory Requirement Or A Judicious Exercise Of The Commission's Prerogative (Notice ¶ 79)

Unlike the provision of in-region interLATA services, the BOCs do not require Commission authorization to engage in electronic publishing. Congress authorized a section 274 affiliate of a BOC or an electronic publishing joint venture to engage in the provision of electronic publishing without any separate or independent Commission action or approval. If BOCs choose to engage in electronic publishing, section 274 of the 1996 Act prescribes the terms under which a BOC and its affiliate structure and operate the business.

Despite this difference in the source of the BOCs' authority to engage in electronic publishing versus in-region interLATA services, the Commission asks whether it should adopt the same procedural rules and standards to review complaints against a section 272 in-region interLATA separate affiliate and a section 274 electronic publishing affiliate.[42] Specifically, the Commission inquires about shifting the burden of proof in a complaint case to the defendant BOC.

U S WEST opposes the adoption of such a rule. First, such a rule not only is not required to achieve the pro-competitive goals of the 1996 Act, but it would operate in a manner directly contrary to expressed Congressional intent. Second, given the First Amendment issues that would undoubtedly be associated with most

[42] Id. ¶ 79.

Section 274 complaints, shifting the burden of proof to a defendant BOC would be contrary to sound principles of due process.

The Commission raised the shifting of the burden of proof issue in the BOC In-Region NPRM, suggesting that the pro-competitive goals of the 1996 Act might be advanced by shifting the ultimate burden of proof from the complainant to the defendant BOC.[43] There the Commission suggests that this may be appropriate for the following reasons. First, the BOC is likely to be in sole possession of information relevant to the complainant's case, and section 271(d)(6) requires the Commission to act upon the complaint within 90 days.[44] Second, the Commission opines that shifting the burden of proof may be an efficient way of resolving complaints against a section 272 affiliate, particularly where the 1996 Act requires expedited disposition of complaints.

In the Notice, the Commission asks whether the burden of proof in a complaint proceeding involving a BOC or its section 274 electronic publishing affiliate should be shifted from the complainant to the defendant for the same policy and procedural reasons.[45] It should not, for the following reasons.

First, unlike section 271(d)(6), which requires expedited Commission action within 90 days after a complaint is made against a BOC or its in-region interLATA affiliate, section 274(e) does not impose any deadline on the Commission with

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[43] BOC In-Region NPRM ¶ 102.

[44] Id.

[45] Notice ¶ 79.

respect to resolving complaints involving a BOC or its electronic publishing affiliate. Thus, even assuming that the section 271(d)(6) expedited process imposes an unusual burden on the Commission, section 274(e) imposes no comparable burden.

Second, in section 274 cases, Congress gave complainants the right to seek relief from the Commission or from any U.S. district court of competent jurisdiction. In contrast, Congress did not provide these two judicial alternatives for complaints involving a section 272 in-region interLATA affiliate.

In district court, in conformity with long-standing practices and processes, a complainant in a section 274 case would bear the burden of proof. Were the Commission to shift the burden of proof to a BOC defendant for complaints filed with the Commission, the Commission would undermine clear Congressional intent that comparable judicial processes be employed in disposing of complaints involving BOCs and their electronic publishing affiliates.

Third, in the BOC In-Region NPRM, the Commission concluded that Congress did not intend to afford BOCs trial-type hearings in enforcement proceedings involving a BOC or its in-region interLATA separate affiliate, in light of Congress' imposition of a 90-day deadline for the disposition of such complaints under section 271(d).[46] In section 274(e), Congress not only established no deadline for the disposition of complaints, but gave complainants the choice of filing their complaint with the Commission or with a federal district court. The fact that

[46] BOC In-Region NPRM ¶ 106.

Congress provided for a judicial proceeding in district court plainly demonstrates that Congress intended to afford trial-type hearings in enforcement proceedings involving a BOC or its electronic publishing affiliate. In the face of the due process of law clearly articulated by Congress for section 274 cases, it would be inappropriate to shift the burden of proof to a BOC defendant in what very well could be a trial-type proceeding.

Fourth, electronic publishing implicates First Amendment issues involving private and commercial speech. Such issues, by their very nature, require careful and deliberate consideration. Actions which threaten either a complainant's or an electronic publisher's First Amendment rights should not be driven solely by considerations of expediency.

The policy considerations and the requirements imposed upon the Commission by section 271(d)(6) for the disposition of complaints involving a section 272 in-region interLATA affiliate and by section 274(e) for a section 274 electronic publishing affiliate are fundamentally different. The burden of proof should not be shifted to the defendant in complaints filed with the Commission involving a BOC or its electronic publishing affiliate.

III. ALARM MONITORING (Notice ¶¶ 68-74)

Section 275(a)(2) of the 1996 Act permits a BOC and its affiliates to provide alarm monitoring services if it was providing alarm monitoring services as of November 30, 1995.

A. Alarm Monitoring Services Are Defined By Section 275(e) Of The 1996 Act And Not By The Commission's Regulatory Model Of Enhanced Services (Notice ¶¶ 68-69)

The Commission "seek[s] to define more clearly the services that are included in the definition of alarm monitoring."[47] The Commission tentatively concludes "that the provision of underlying basic tariffed telecommunications services alone, without an enhanced or information component, does not fall within the definition of alarm monitoring service under section 275(e)."[48] Contrary to the Commission's proposed gloss on the definition of alarm monitoring service in section 275(e), that section is clear on its face requiring no additional clarification or explanation.

Congress defined alarm monitoring services in section 275(e). It did not authorize the Commission to develop its own definition or to modify the definition adopted by Congress. Therefore, the determination of whether a service is alarm monitoring must be based solely upon whether the service possesses the characteristics and performs the functions described by Congress.

Section 275(e) defines an alarm monitoring service:

> The term "alarm monitoring service" means a service that uses a device located at a residence, place of business, or other fixed premises
>
> > (1) to receive signals from other devices located at or about such premises regarding a possible threat at such premises to life, safety, or property, from burglary, fire, vandalism, bodily injury, or other emergency, and
> >
> > (2) to transmit a signal regarding such threat by means of transmission facilities of a local exchange carrier or one of its affiliates to a remote monitoring center to alert a person at such

[47] Notice ¶ 69.

[48] Id.

> center of the need to inform the customer or another person or police, fire, rescue, security, or public safety personnel of such threat.[49]

The definition is straightforward and unambiguous.

The language used by Congress to define alarm monitoring is important and controlling. In addition, it is important to recognize what the statutory definition does not say. It does not define alarm monitoring as a service which is provided by the local exchange carrier to a residence or business end-user customer.[50] In fact, the definition contemplates that alarm monitoring is a service provided to alarm monitoring companies which use the signal scanning and transport service provided by the local exchange carrier to inform the customer or public safety authorities about a threat to the premises of the alarm monitoring company's customer. The alarm monitoring company which purchases the signal scanning and transport service from the local exchange carrier has the primary relationship with the end user customer, not the local exchange carrier.

The definition in section 275(e) identifies the following functional elements of alarm monitoring:

- a device (CPE located at a residence, place of business, or other fixed premises)

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[49] 1996 Act, 110 Stat. at 106 § 275(e).

[50] The Commission erroneously assumes that the definition of alarm monitoring service in section 275(e) requires that the service be provided to end-user customers. Notice ¶ 70 ("Currently, it appears that only one BOC provides alarm monitoring service as an information service. Ameritech provides an alarm monitoring service directly to end-user customers, including the sale, installation, monitoring and maintenance of monitoring and control systems for end-users."). This is not one of the elements of the definition.

- which receives signals
- from other devices (CPE located at a residence, place of business, or other fixed premises); and
- the transmission of such signals to
- a remote monitoring system.

A service which consists of these functional elements is an alarm monitoring service. Nothing more is required.

The Commission erroneously concludes that it may use its own regulatory framework to define alarm monitoring and may disregard the definition in the 1996 Act. For example, the Commission concludes that an alarm monitoring service must possess an enhanced service component.[51] The Commission is wrong in this assumption.

The statutory definition of alarm monitoring in section 275(e) does not describe the service as involving net code or protocol conversion (element 1 of the Commission's definition of an enhanced service).[52] Nor does the definition require the local exchange carrier to provide the service directly to a subscriber or end-user customer (element 2 of the Commission's definition of an enhanced service). Finally, that statutory definition contains no requirement that an alarm monitoring service involves end-user interaction with information stored by the local exchange

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[51] Id. ¶ 69. An enhanced service has been defined by the Commission as a service that employs computer processing applications that: (1) act on the format, content, code, protocol or similar aspects of a subscriber's transmitted information; or (2) provide the subscriber additional, different, or restructured information; or (3) involve subscriber interaction with stored information. 47 CFR § 64.702(a).

[52] See note 51 immediately above.

carrier (element 3 of the Commission's definition of an enhanced service). The Commission's attempt to superimpose the characteristics of an enhanced service on the statutory definition of alarm monitoring is misguided and in error. Section 275(e) of the 1996 Act, and not the Commission's previous basic/enhanced dichotomy, determines whether a service is an alarm monitoring service.

B. Scan-Alert And Versanet Are Alarm Monitoring Services As Defined In Section 275(e) Of The 1996 Act (Notice ¶¶ 69-70)

In response to a request for information regarding U S WEST's services relating to the alarm monitoring business, U S WEST advised the Commission that it offers two services which are alarm monitoring services under section 275(e) of the 1996 Act: Scan-Alert and Versanet. U S WEST provided the Commission with a brief explanation of each of these services.[53]

In the Notice, the Commission concludes that Scan-Alert is not an alarm monitoring service under the 1996 Act because it "do[es] not involve enhanced or information features."[54] The Commission requests comment on whether Versanet,

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[53] Letter dated May 9, 1996, from Elridge A. Stafford, Executive Director - Federal Regulatory, U S WEST, to Rose Crellin, FCC; Letter dated May 16, 1996, from Dan L. Poole, Corporate Counsel, U S WEST, to Lisa Sockett, FCC. U S WEST also advised the Commission that another U S WEST service called Scan-Alert was an alarm monitoring service.

[54] Notice ¶ 69.

an admitted enhanced service,[55] is an alarm monitoring service under section 275(e) and whether it should be grandfathered under that section.[56]

Contrary to the Commission's conclusion, both Scan-Alert and Versanet possess the characteristics and perform the functions described in section 275(e). Therefore, both are alarm monitoring services.

Scan-Alert is a tariffed service in Arizona, Oregon, and Washington which U S WEST offers to alarm monitoring companies. The service operates in the following manner: A device at the patron's premises (a CPE "device") sends sensor data to a scanner located in a U S WEST central office. The sensor data is received from the patron's premises via a derived channel on a standard basic exchange line (e.g., 1FB, 1FR, etc.). The scanner connects with a U S WEST message switch that is remotely located that performs a portion of the monitoring function. The scanner polls the patron's CPE to determine the status of the protected premises. If there is no response or if the patron's CPE acknowledges an event at the patron's premises, the scanner transmits the information to the messaging switch and the data is transmitted to the alarm monitoring company (i.e., "transmission of the signal" to a "remote monitoring device"). The alarm company interprets the data and determines what, if any, action to take.

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[55] In the Matter of Applied Spectrum Technologies, Inc., Petition for Declaratory Ruling Under §64.702 of the Commission's Rules Regarding the Status of "Spread Spectrum" Transmission Services, Memorandum Opinion and Order, 58 Rad. Reg. 2d (P&F) 881, 883 ¶ 6 (1985).

[56] Notice ¶ 70.

Versanet is a tariffed service in Arizona, Colorado, Idaho, Iowa, Minnesota, Nebraska, New Mexico, Utah, and Wyoming which U S WEST offers to alarm monitoring companies. That service utilizes a spread spectrum signal. The service operates in the following manner: A remote module (a CPE "device") located on the alarm monitoring company patron's premises sends alarm sensor status data over the patron's regular telephone line to U S WEST's scanner located in the central office. The scanner checks the alarm monitoring company patrons' lines every few seconds for the spread spectrum signal. An unbroken circuit generates an "on" signal, severing one of the wires stops the flow of current and generates an "off" signal. The remote module relays this "on/off" data over the patron's telephone line to the central office via a spread spectrum signal. The scanner demodulates the spread spectrum signal and converts it to Frequency Shift Key ("FSK") modulation and ASCII code. The data is then forwarded to a terminal device located at the alarm monitoring company's surveillance center (i.e., "transmission of the signal" to a "remote monitoring device"). The alarm company interprets the data and determines what, if any, action to take.

The functions performed by both Scan-Alert and Versanet track precisely the statutory definition of alarm monitoring service. Both use a "device" (CPE) located at a residence or place of business or other fixed premises of a patron to "receive" signals from other devices (CPE) at the premises. Both utilize scanners in the central office to poll the premises to detect signals of a threat. Both "transmit" a signal of a threat received from the premises via U S WEST transmission facilities

to a person (an alarm monitoring company) at a "remote monitoring center." Both alert the person (an alarm monitoring company) of a need to inform the patron or public safety authorities about a threat.

Thus, Scan-Alert and Versanet are alarm monitoring services because they both meet the definition of alarm monitoring in section 275(e). In light of the fact that U S WEST was providing both services as of November 30, 1995, U S WEST and its affiliates may provide alarm monitoring services on a going-forward basis pursuant to section 275(a)(2).

IV. TELEMESSAGING (Notice ¶¶ 75-77)

A. Telemessaging Should Be Considered An InterLATA Information Service Only When The Service Includes An Integrated InterLATA Transmission Component Between The End User And The BOC (Notice ¶ 75)

As the instant Notice acknowledges, the Commission tentatively concluded in the BOC In-Region NPRM that telemessaging is an information service[57] and that a BOC's "provision of [telemessaging] on an interLATA basis would be subject to the requirements of section 272 in addition to the requirements of section 260."[58] U S WEST agrees with these conclusions,[59] to the extent they incorporate the following principles.

Information services generally consist of two components: (1) an enhanced or information service functionality, and (2) an underlying transmission component

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[57] Notice ¶ 75, citing to BOC In-Region NPRM ¶ 54.

[58] Id.

[59] See also U S WEST Comments, CC Docket No. 96-149, at 9-11.

between the service provider and the end user.[60] For purposes of the 1996 Act, an information service becomes an interLATA information service only when:

- the service integrates the interLATA transmission component between the service provider and the end user; and
- that transmission component is provided by the BOC as one of the integrated bundled components of the information service.[61]

If an information service is offered on a stand-alone basis, without an integrated interLATA transmission component, the service is fundamentally intraLATA or local in nature, even if the service can be accessed by the end user from another LATA. In the latter situation, the end user, not the BOC, makes the decision to access the service from another LATA and arranges and separately pays for an interexchange carrier to provide that interLATA transport.[62] The only service provided by a BOC would be an intraLATA information service.[63]

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[60] See Notice n.9.

[61] Compare the Commission's own observations at id. (noting that, under the Modification of Final Judgment ("MFJ"), the BOCs were precluded from providing information services on an interLATA basis "because such provision involved the transmission of information across LATA boundaries[.]").

[62] If the caller is making the call from another LATA, an interexchange carrier such as AT&T Corp., MCI Telecommunications Corporation, Sprint Telecommunications (or U S WEST Long Distance, in appropriate and lawful circumstances) must provide the transport for that call to the LATA of the end user's voice mail box.

[63] U S WEST believes that this jurisdictional analysis is the appropriate one for a basic section 274 analysis. This is not to say, however, that the Commission would lack all jurisdictional reach over such a service. For example, a preemption analysis could find a sufficient interLATA or interstate nexus to support a Commission preemption, in appropriate circumstances (where the state action is demonstrable, not speculative, and the adverse impact on federal policy discernible in a real and meaningful way). See Notice ¶ 21 (with specific reference to item 2)). See also In the Matter of Petition for Emergency Relief and Declaratory Ruling

Access to U S WEST's local voice messaging service via an interexchange carrier would not make U S WEST's voice messaging service an interLATA information service. A contrary reading could lead to the characterization that all local telephone services were interLATA solely by virtue of the fact that they were accessible via the toll network. Voice messaging becomes an interLATA information service, and subject to the separate affiliate requirements in section 272 of the 1996, only if U S WEST offers both the information service and the interLATA transmission component as an integrated single service.

B. The Non-discrimination Provisions Of Computer III And ONA Are Consistent With Section 260(a), But They Are Not Required In View Of The Obligations Created By Section 260 -- If The Commission Concludes That The Non-discrimination Provisions Of Computer III And ONA Continue To Apply, They Should Apply To All Incumbent Local Exchange Carriers (Notice ¶ 77)

Section 260(a) describes non-discrimination requirements which apply to local exchange carriers engaged in providing telemessaging. Section 260(a)(1) provides that a local exchange carrier "shall not subsidize its telemessaging service directly or indirectly from its telephone exchange service or its exchange access," and section 260(a)(2) provides that a local exchange carrier "shall not prefer or discriminate in favor of its telemessaging service operations in its provision of telecommunications services." In the Notice, the Commission seeks comment on whether the non-discrimination provisions of Computer III and ONA are consistent with section 260(a)(2) and whether these provisions should be applied just to BOCs

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Filed by BellSouth Corporation, Memorandum Opinion and Order, 7 FCC Rcd. 1619 ("1992).

or to all incumbent local exchange carriers.[64] If these provisions should not continue, the Commission asks whether additional regulations are necessary to implement section 260(a).[65]

U S WEST agrees with the Commission that existing Computer III and ONA requirements continue to apply to a local exchange carrier's provision of intraLATA enhanced services to the extent consistent with the 1996 Act.[66] However, the non-discrimination provisions in section 260(a) supplant any need for the continued application of Computer III and ONA to telemessaging. The non-discrimination requirements in section 260(a) are plain and unambiguous. No additional regulations are required to interpret or implement these requirements.

Section 260(a) imposes non-discrimination requirements on all incumbent local exchange carriers which provide telemessaging. Therefore, if the Commission concludes that Computer III and ONA requirements should continue to apply to telemessaging, the Commission's requirements should apply to all incumbent local exchange carriers and not just to BOCs to ensure that the application of the Commission's requirements is consistent with the application of the requirements in section 260(a).

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[64] Notice ¶ 77.

[65] Id.

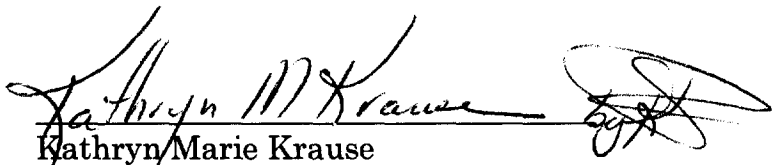
[66] Id.

V. CONCLUSION

U S WEST's comments in this proceeding are designed to support the intent of Congress to establish a pro-competitive, deregulatory national policy framework for the U.S. telecommunications industry. The Commission should be guided by the same Congressional intent to expedite the trend toward full competition and less regulation. Most of the requirements in sections 260, 274, and 275 are clear, unambiguous, and require little interpretation. Some commenters may urge the Commission to read into these sections additional requirements not intended or required by Congress. U S WEST's comments are based upon the plain meaning of the words in these sections and the Congressional purpose underlying each of the obligations and requirements. The Commission should follow the same approach in this proceeding.

Respectfully submitted,

U S WEST, INC.

By: 

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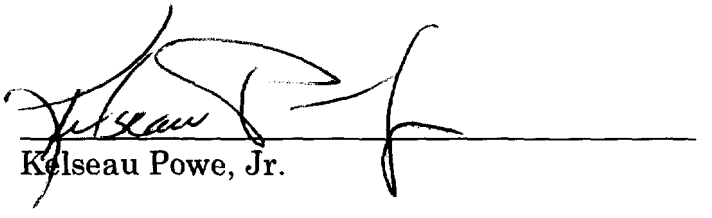
September 4, 1996

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 4th day of September, 1996, I have caused a copy of the foregoing **COMMENTS OF U S WEST, INC.** to be served via hand-delivery, upon the persons listed on the attached service list.



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